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Bay Area Drum Site, San Francisco

Dear Ken:

Nico van Aelstyn and I have had several conversations with you since my letter to you dated February 14, 1994. At your request, we have provided you with several documents relating to the Bay Area Drum site (the "Site"). I understand that you also have requested that the Group provide Waymire Drum Company ("Waymire") with a specific proposal concerning the terms by which Waymire could participate in the Bay Area Drum Ad Hoc PRP Group. I am writing now to set forth such terms, and to inform you of recent developments that make it important for Waymire to respond quickly if it wishes to act upon this opportunity to limit its exposure in this matter.

Update.

As you know, the Group has been negotiating a consent order with the State whereby the Group will agree to address the remediation of the Site. An agreement in principle has been reached, and the Attorney General's office recently informed us that a draft of the consent order is now undergoing final review at the Department of Toxic Substances Control. We expect to execute the consent order in the near future.

Once the consent order is in place, the State will issue unilateral orders of non-compliance to those PRPs that are not parties to the consent order. The Group then will be able to seek treble damages in addition to contribution from those found to be in non-compliance. See California Health & Safety Code § 25359.3(a). You should know that the Group plans to file such an

action against the recalcitrant PRPs in order to recover response costs it may incur at the Site. Thus, it is in Waymire's interest to become a signatory to the consent order and not be issued a unilateral order of non-compliance.¹ The only way for Waymire to do that is to join the Group.

Group Participation Proposal.

In light of the imminence of the consent order, the Group's Executive Committee recently considered your request for a specific participation proposal for owner/operators such as Waymire. The Group presently allocates its expenses amongst its members on a volumetric basis. Using that approach as the framework for integrating owner/operators into the Group's allocation formula, the Group would be willing to allow Waymire to participate in the Group under the following two terms:

- (1) The Group's expenses are to be divided between owner/operators and generators on a 75/25 basis, respectively.

This ratio recognizes that owner/operator PRPs bear greater responsibility for remediating the Site than do generator PRPs. As I iterated in my February 14 letter, "any allocation scheme that includes both generators and owners and operators must take account of the fact that owners and operators bear greater fault than do their former customers."

¹ As you know from my February 14 letter, there is no question that Waymire is liable for the cost of the Site's cleanup. Waymire owned and operated the Site during a period of time when the drum reconditioning operations at the Site are known to have been careless. In its capacity as a former owner/operator, it is liable on a strict liability and joint and several basis under both the federal and state Superfund laws. See Section 107(a)(2) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9607(a)(2), and the Carpenter-Presley-Tanner Hazardous Substance Account Act, California Health & Safety Code § 25323.5. Owner/operators are often the primary targets of cost recovery actions due to the widely-held view that they should bear greater responsibility for site remediation than the generator PRPs who were their customers.

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- (2) The proportional share of each owner/operator is to be determined by dividing the number of years that it occupied the Site by ten.

This ratio recognizes that some of the owner/operator PRPs are unavailable. As you know, the Bedini family owned and operated the Site for the greatest period of time -- from its beginning in approximately 1947 through 1965 when Myers Drum Company took over its operation, and once again from 1970 until 1977 after which Waymire took control of the Site. As you also know, all of the Bedinis died long ago. For the time being, the Group must consider Myers Drum also to be unavailable as it settled with the State during its bankruptcy. Thus, the denominator of ten is arrived at by adding Waymire's tenure (approximately 1.5 years) to that of Bay Area Drum Co., Inc. (approximately 8.5 years). Applying terms (1) and (2) above, Waymire's allocated share of the Group's expenses would be 11.25%.² In practical terms, this means that Waymire, as a participating Group member, would be paying that share of periodic assessments made to cover the Group's expenses for such things as implementing certain measures at the Site and negotiating a cost-effective resolution with the State.

As noted above, we expect to execute the consent order soon. We need to know in advance which PRPs are to be members of the Group and signatories to the consent order and thereby gain the benefit of its protections -- and which are to be issued unilateral orders of non-compliance subjecting them to actions for treble damages. Therefore, I ask that you respond to the specific proposal set forth above no later than September 30, 1994.

Please call me or Nico van Aelstyn if you have questions concerning any of the foregoing.

Very truly yours,



Joseph S. Armao

cc: The Bay Area Drum Executive Committee

² Waymire's 1.5 year tenure at the Site would give it a 15% share of the owner/operators' portion (see term (2)), and 75% of this figure is 11.25% (see term (1)).